

( Without Reference to File )

CONCURRENCE IN SENATE AMENDMENTS

AB 1484 (Budget Committee)

As Amended June 25, 2012

Majority vote. Budget Bill Appropriation Takes Effect Immediately

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ASSEMBLY:	(March 22,	SENATE:	21-18	(June 27,
	2012)			2012)

(vote not relevant)

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Original Committee Reference: BUDGET

SUMMARY : Makes the statutory changes needed to achieve a total of \$3.3 billion of budget savings related to the dissolution of redevelopment agencies (RDAs) as estimated in the Governor's May Revision of the Budget. The bill includes a process to identify excess redevelopment property tax revenues that should have been allocated to schools this month, but was withheld by successor agencies or county auditor controllers, and requires the rapid allocation of those funds. The bill also requires an audit process to identify and locate the assets of the former redevelopment agencies and to require the return of cash balances for distribution as property tax number. After successful completion of these processes, successor agencies and their communities will be entitled to retain most real estate assets of the former RDAs consistent with a plan that they develop for their use, use excess RDA bond proceeds for additional projects, and receive repayments of community loans to the former RDAs over time. The bill also makes many additional specific changes intended to facilitate the dissolution and winding up process, better resolve disputes, and provide additional tools and certainty. Furthermore, the bill provides for repayments of loans from the Low and Moderate Income Housing Funds, defines housing assets, and authorizes the expenditure of excess housing bond proceeds for affordable housing purposes.

The Senate amendments delete the Assembly version of this bill, and instead:

- 1) Establish a due diligence review of successor agencies, to be done by a licensed accountant, approved by the county auditor controller, in order to make a determination of the unobligated balances

available for transfer to taxing entities.

- 2) Specify that a due diligence review, at a minimum, shall include the following:

- a) The dollar value of assets transferred from the former redevelopment agency (RDA) to the successor agency;
- b) The dollar value of assets transferred after January 1, 2011, through June 30, 2012, by the RDA or successor agency to the city, county, or city and county which established the former RDA (sponsoring entity), the purpose of the transfer and whether it was required by an existing enforceable obligation;
- c) The dollar value of any cash or cash equivalents transferred after January 1, 2011, through June 30, 2012, by the RDA or successor agency to any other public agency or private party, the purpose of the transfer and whether it was required by an existing enforceable obligation;
- d) A review of expenditure and revenue accounting information and identification of transfers and funding sources for the 2010-11 and 2011-12 fiscal years that reconciles balances, assets, and liabilities of the successor agency on June 30, 2012 to those reported to the State Controller for the 2009-10 fiscal year;
- e) A separate accounting balance for the Low and Moderate Income Housing Fund; and,
- f) A total of the net balances as prescribed, thus resulting in a sum that shall be transferred to the county auditor-controller and allocated to affected taxing entities.

- 3) Specify the due diligence review conducted of the Low and Moderate

Income Housing Funds are due to the Department of Finance (DOF), the county auditor-controller, the State Controller, and the oversight board, by October 1, 2012, and specifies that the review of the remaining fund and account balances are due December 15, 2012.

- 4)Require the oversight board to conduct a public comment session five business days prior to approving the determination of the amount of cash and cash equivalents that are available for disbursement to taxing entities pursuant to the findings in the due diligence review.

- 5)Authorize an oversight board to allow a successor agency to retain specified assets or funds necessary to meet enforceable obligations and requires the oversight board to notify DOF of these changes and the purposes for which the funds are being retained.
- 6)Authorize DOF to adjust any amount associated with the determination and requires DOF to complete its review of the Low and Moderate Income Housing Fund determinations by November 9, 2012, and the remainder of the funds and accounts by April 1, 2012.
- 7)Require DOF to provide the oversight board and the successor agency an explanation of its basis for overturning or modifying any findings, determinations, or authorizations of the oversights boards decisions regarding the determinations of the due diligence review findings.
- 8)Authorize a successor agency and sponsoring entity to request to meet and confer with DOF to resolve any disputes regarding the amounts or sources of funds identified as available for transfer as determined by DOF; the decision and determinations may be modified accordingly.
- 9)Require each successor agency to transmit to the county auditor-controller the amount of funds required pursuant to the final determination of DOF within five working days of the final determination and for the county auditor-controller to disburse these funds to the taxing entities.
- 10)Provide that if DOF determines that the payment of the full amount required by the final determination is not currently feasible or would jeopardize the ability of the successor agency to pay enforceable obligations in a timely manner, it may agree to an installment payment plan.
- 11)Provide that if a successor agency fails to remit to the county auditor-controller the sums established in the final determination, and no payment plan was established, the funds may be recovered through an offset of sales and use tax or property tax allocations to any local agency to which the funds were transferred in absence of an enforceable obligation and/or to the city, county, city and county that created the former RDA and who is also performing the duties of the successor agency.
- 12)Establish the process for DOF and the county auditor-controller to follow if they are using an offset to recover the funds.

- 13)Require, if a legal action contesting a withholding of sales tax or property tax is successful, that upon a final judicial determination, the court to order the state or the county auditor-controller to pay the prevailing party a penalty equal to 10% of the amount of funds found by the court to be improperly offset.
- 14)Provide a process for the reversal of the offset of sales or property tax if necessary.
- 15)Provide that if the full payment is made, either through final determination of the amount due or upon final judicial determination, DOF shall issue a finding of completion of the requirements to the successor agency.
- 16)Provide the following to a successor agency or sponsoring entity upon the successor agency receipt of a finding of completion from DOF:

- a) The ability to retain real property formerly owned by the RDA, in addition to governmental use property, after a long range property management plan has been approved by DOF;
  - b) Repayment of loans made by the sponsoring entity to the former RDA as prescribed; and,
  - c) The ability to spend remaining excess proceeds from bonds issued prior to January 1, 2011, as prescribed.
- 17) Establish a Community Redevelopment Trust Fund to serve as a repository of the former redevelopment agency's real properties (other than those used for governmental purposes) until a long range property management plan can be prepared by the successor agency.
- 18) Create the process successor agencies shall follow when developing their long range property management plans.
- 19) Specify that if a sponsoring entity has been authorized to receive repayment of loans to its former RDA, then 20% of the repayment monies shall be transferred to the Low and Moderate Income Housing Asset Fund of the entity that assumed the former RDAs housing functions, to be spent on affordable housing.
- 20) Toll the two year statute of limitations with respect to adoptions, findings, and determinations of any former redevelopment agency or

its legislative body until DOF has issued a finding of completion to the successor agency of the former RDA.

- 21) Toll the statute of limitation for bringing an action with respect to the validity or legality of any issue, document, or action related to the validity of bonds and the redevelopment plan of any former RDA or its legislative body until DOF has issued a finding of completion to the successor agency of the former RDA.
- 22) Require a successor agency to submit a copy of the Recognized Obligation Payment Schedule (ROPS) to the county administrative officer, the county auditor-controller, and DOF at the same time the successor agency submits it to the oversight board.
- 23) Require, the county auditor- controller to make any objection to the inclusion of an item on a ROPS prior to the ROPS being approved by the oversight board.
- 24) Clarify the process and timelines for a successor agency to submit its ROPS to DOF.
- 25) Authorize a successor agency to request an opportunity to meet and confer with DOF over disputed items on the ROPS, such a process may last up to 30 days.
- 26) Provide that if a successor agency does not submit a ROPS to DOF within the specified timelines then the sponsoring entity that created the RDA shall be subject to a civil penalty of \$10,000 per day for every day the ROPS is late. If a ROPS is more than 10 days late the successor agency will forego 25% of the maximum administrative costs approved for that period.
- 27) Specify if a successor agency fails to submit a ROPS within five days of the date of the next property tax allocation DOF may determine if any amount should be withheld by the county auditor-controller for payments for enforceable obligations from distribution to the taxing entities.
- 28) Prohibit a county auditor- controller from withholding any other amounts from the property tax allocations as prescribed by the redevelopment dissolution process, unless required by court order.
- 29) Prohibit a successor agency or oversight board from restoring funding for an enforceable obligation that was deleted or reduced by DOF unless it reflects the decisions made during the meet and confer

process with DOF or pursuant to a court order.

- 30) Require DOF to provide notice to the successor agency and the county auditor-controller as to the reasons it is eliminating or

modifying any item on a ROPS prior to approval of the ROPS.

- 31)Authorize DOF to agree to an amendment to a ROPS to reflect a resolution of a disputed item, provided that it does not affect a past allocation of property tax or create a liability for any affected taxing entity.
- 32)Require the county auditor-controller to report to DOF regarding the property tax disbursement amounts and how each disbursement was calculated.
- 33)Establish a process for successor agencies or the county auditor-controller, as needed, to make any required pass-through payments that were not previously made by the former redevelopment agency prior to its dissolution.
- 34)Require, by July 9, 2012, the county auditor-controller to determine the amount owed by the successor agency to taxing entities from the 2011-12 tax increment allocation to the former RDA that was not distributed to the taxing entities for the period of January 1, 2012- June 30, 2012 and make a demand for payment of these funds which shall be paid by July 12, 2012.
- 35)Specify that if the county auditor-controller fails to determine the amounts owed to the taxing entities and present a demand for payment by July 9, 2012, to the successor agencies, DOF or any affected taxing entity may request a writ of mandate to require the county auditor-controller to immediately perform this duty. Any failure to perform the duty will result in a civil penalty of 10% of the amount owed to the taxing entities plus 1.5% of the amount owed for each month that the duties are not performed.
- 36)Provide that if the county auditor-controller fails to distribute the full amount of funds received from the successor agencies as required under the payment due July 9, 2012, then the county shall not receive its distribution of sales and use tax scheduled for July 18, 2012, until such actions are performed.
- 37)Specify that if, any successor agency that fails to make the payment demanded and due to the county auditor-controller by July 9, 2012, then DOF or any affected taxing entity may file for a writ of

mandate to require the successor to immediately make this payment. Failure to make the payment by July 12, 2012, shall be subject to a civil penalty of 10% of the amount owed to taxing entities plus .5% of the amount owed to the taxing entity for each month that the payment is not made.

- 38)Create a penalty for the city, county, or city and county which created the redevelopment area of 10% of the amount the successor agency has failed to pay by July 12, 2012, plus 1.5% of the amount owed to the taxing entity per each month the payment is late. The city, county, or city and county that created the redevelopment area could also forego its distribution of sales tax, scheduled to be distributed on July 18, 2012, until the payment is made by the successor.
- 39)Provide that if the State Controller determines that a non-housing asset was transferred by a successor agency to the sponsoring entity after January 31, 2012, and that transfer did not occur pursuant to a ROPS approved enforceable obligation, then the non-housing asset shall be returned to the successor agency.
- 40)Require the entity assuming the housing functions of the former redevelopment (housing successor) to submit a list to DOF by August 1, 2012, of all the housing assets that have been transferred to it since February 1, 2012, and all remaining housing assets that need to be transferred to the housing successor. The list must contain an explanation of how each property/asset meets the definition of housing asset. DOF will have 30 days to object to any asset on the list and may have a meet and confer process to discuss the asset with the housing successor if there is objection to an item. Transfers for which there is no objection (or the objection is withdrawn) shall not be subject to further review.
- 41)Create a new Low and Moderate Income Housing Asset Fund to be maintained by each housing successor and requires that any monies placed in the fund be spent consistent with the housing-related provisions of the Community Redevelopment Law.
- 42)Define "housing assets" of the former RDAs that are to be transferred to the housing successor as follows:
  - a) Any real property, interest in, or restriction on the use of real property, and any personal property provided in residences, that were acquired for low-and moderate-income housing purposes, either by purchase or through a loan with any source of funds;

- b) Any funds that are encumbered by an enforceable obligation to build or acquire low-and moderate-income housing;
  - c) Any loan or grant receivable, funded from the Low and Moderate Income Housing Fund, from homebuyers, homeowners, nonprofits, or for-profit developers, and other parties that require occupancy by persons of low or moderate income;
  - d) Any funds derived from rents or operation of properties for low-and moderate-income housing purposes by other parties that were financed with any source of funds;
  - e) A stream of rents or other payments from housing tenants or operators of low-and moderate-income housing financed with any source of funds that are used to maintain, operate, and enforce the affordability of housing or for enforceable obligations associated with low-and moderate -income housing; and,
  - f) Repayments of loans or deferrals owed to the Low and Moderate Income Housing Fund by the former RDA to finance payments made to the Supplemental Educational Augmentation Revenue Fund (SERAF).
- 43)Authorize repayments of any SERAF loans or deferrals to the housing successor beginning in the 2013-14 fiscal year. For each housing successor, the maximum repayment amount authorized each fiscal year shall be equal to one-half of the increase between the amount distributed to taxing entities from the Redevelopment Property Tax Trust Fund in that fiscal year and the amount that is distributed to taxing entities in the 2012-13 base year.
- 44)Authorize a housing successor to direct the spending of the proceeds of housing bonds that were issued for the purposes of affordable housing and backed by the Low and Moderate Income Housing Fund prior to January 1, 2011; specifies that the proceeds are the remainder after authorized enforceable obligations are paid.
- 45)Establish a process for the housing successor to identify projects and direct expenditures from the remaining housing bonds.
- 46)Authorize the transfer of all land use related plans and functions of the former RDA to the sponsoring entity at its request; however, prohibits the sponsoring entity from changing or adding on to a project area, or take any action that would increase the amount of tax increment obligated.

- 47)Require that notice relating to any validation action of any successor agency or former redevelopment agency be given to DOF and the State Controller prior to the actions being filled.
- 48)Provide that all actions contesting any act taken or determination or decisions made related to redevelopment dissolution law be brought in superior court and be filled in the County of Sacramento; and, includes up to \$2 million subject to allocation by DOF for the Sacramento County Superior Court for workload specific to these actions.
- 49)Authorize a successor agency to refund or refinance bonds or other indebtedness as prescribed.
- 50)Include, for the purposes of defining a city, county, or city and county under this part, any entity included in an annual financial report, any component unit, and any entity controlled by and financially responsible or accountable to, a city, county, or city and county.
- 51)Authorize oversight boards to reduce the minimum threshold on the administrative cost allowance.
- 52)Specify that the cap on successor agency administrative cost allowances excludes any litigation expenses related to assets or obligations, settlements and judgments, and the costs of maintaining assets prior to disposition.
- 53)Specify that employee costs associated with work on a specific

project implementation shall not constitute administrative costs subject to the cost cap.

- 54)Authorize a reserve to be held when required by the bond indenture or when the next property tax allocation will be insufficient to pay obligations due under the provisions of the bond for the next payment due.
- 55)Specify that costs incurred to fulfill collective bargaining agreements for layoffs or terminations of city employees who performed work for the former RDA are enforceable obligations payable from property tax funds.
- 56)Provide that obligations to employees that are transferred from the former RDA or successor agency to the entity assuming the housing

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functions are enforceable obligations payable from property tax funds.

- 57)Require the successor agency or designated local authority to enter into an agreement with the entity assuming the housing functions and to reimburse it for any costs of specified employee obligations if an employee is transferred to the housing successor entity.
- 58)Provide that when appointing a member of the oversight board from the employees of the former RDA, if the majority of the employees were city or county employees, then the appointment should be made from the organization that represents those employees.
- 59)Provide that if there is no employee organization that represents the employees of the former RDA, city, or county, then the appointment should be made from among the employees of the successor agency.
- 60)Require the auditor-controller to deposit the unitary, supplemental, and roll corrections applicable to tax increment that would have been due to the former RDA into the Redevelopment Property Tax Trust Fund (Property Tax Trust Fund).
- 61)Clarify that an RDA or successor shall not make any future deposits to the Low and Moderate Income Housing Fund.
- 62)Provide immunity to members of the designated local authorities and oversight boards for actions taken related to this Budget Act.
- 63)Allow a city, county, or city and county, or joint powers authority that authorized the creation of the former RDA and elected not to be the successor agency to subsequently reverse that decision and serve as the successor agency.
- 64)Extend the provisions of the Polanco Redevelopment Act, for purposes of clean-up plans and liability limits, to successor agencies and authorizes those powers to be also transferred to a housing successor entity at its request.
- 65)Clarify that a successor agency is a separate public entity and states that the liabilities of the former RDA shall not transfer to the sponsoring entity.
- 66)Require successor entities to follow the Ralph M. Brown Act.

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- 67)Authorize a sponsoring entity to loan or grant funds to a successor agency for administrative costs, enforceable obligations, or project-related expenses at the sponsoring entities discretion, subject to oversight board approval. Repayment of such loans shall be deemed an enforceable obligation.
- 68)Add successor agencies to the list of "local public entities" that can file for bankruptcy under federal law.
- 69) Make conforming changes related to the delays caused by the California Supreme Court's ruling in the case California Redevelopment Association v. Matosantos (2011) 53 Cal. 4th 231.
- 70)Appropriate \$22 million to DOF for its use or allocation to other departments to implement the provisions of this Budget Act, subject

to legislative notification. This amount includes providing up to \$2 million for court costs as prescribed.

71) Contain an appropriation allowing this bill take effect immediately upon enactment.

72) Add Legislative intent language regarding the methodology for calculating pass-through payments in order to ensure pass-through payments are fully paid.

AS PASSED BY THE ASSEMBLY , this bill expressed the intent of the Legislature to enact statutory changes relating to the Budget Act of 2012.

FISCAL EFFECTS : This bill makes the statutory changes needed to achieve a total of \$3.3 billion of budget savings related to the dissolution of redevelopment agencies (RDAs) as estimated in the Governor's May Revision of the Budget. This amount is composed of two parts: 1) \$1.5 billion in school funding from transfers of cash balances that were held by the former RDAs; and, 2) \$1.8 billion in school funding budgeted from ongoing property tax savings resulting from the winding down of redevelopment.

COMMENTS :

1) Under the existing law former RDAs are required dissolve and establish a successor agency to unwind the affairs of the RDA, and make the necessary approved expenditures to pay off debts. Many RDAs, prior to shut down in February 2012, made expenditures of cash and transferred other cash assets that might in fact be contrary to

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the provisions of AB 26 X1 (Blumenfield), Chapter 5, Statutes of 2011-12 First Extraordinary Session. Current law provides for a way to reclaim the assets through actions of the State Controller, however, due to the budget cash shortage the state needs to have these cash assets returned to the successor agency for distribution to the taxing entities sooner than the current process provides for. This will achieve \$1.5 billion of school funding from transfers of cash balances that were held by the former RDAs.

2) Provisions regarding immediate payments are required because the last property tax payments prior to RDA dissolution did not get distributed properly; including the RDA failing to make the pass-through payments. Taxing entities, including schools, are out millions of dollars in past-through payments that should have been made by the former RDA at the beginning of the year.

3) The trailer bill is directed at expediting and enhancing collection and disbursement of the outstanding payments that are due to taxing entities in an expedient manner:

- a) It sets up a process to review financial records and transactions that occurred between the former RDA or the successor agency and other public or private entities that may not have been authorized under the provisions established in AB 26 X1 and return those funds to the successor agencies for the benefit of the taxing entities either through direct payment, or an offset of sales or property tax if the successor agency or sponsor entity fail to comply with the payment request; and,
- b) It provides assurance to successor agencies and others that offsets will not be used haphazardly by requiring a penalty to be paid by the state or county if a sales tax or property tax offset is determined by a court to be improperly levied.

4) The trailer bill also works to provide more flexibility to the process than what is authorized under existing law:

- a) It creates the ability for successor agencies to fund other projects not currently enforceable obligations with excess remaining bonds proceeds;
- b) It provides certainty to the transfer of assets, both housing and non-housing after appropriate review;
- a) It suspends the "fire sale" of redevelopment property and

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enables communities to retain properties for redevelopment-related purposes after cash balances are recovered and settled;

- b) It provides to local governments loan repayments made to RDAs and those due to the Low and Moderate Income Housing Funds; and,
- c) It makes a variety of technical changes that are intended to ease the process of dissolution and provide greater direction to the successor agencies, oversight boards, and successor housing entities that are integral to the dissolution process.

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